pp. 2–4). In August 1962, the Deputy Vice Chairman of the Board advised petitioner by written memorandum that his work was below acceptable standards and indicated specific respects in which he was deficient (Pet. App. 6a; Def. Exh. E). And for the quarter ending March 31, 1963, petitioner was given a written report showing that he was "below average in production, quality, and overall efficiency," and was orally advised that these facts "raised a strong presumption that a regular within grade salary increase was not warranted" (Pet. App. 6a; Def. Exh. 1, p. 3). In May 1963, his overall efficiency and production indices were far below the Board's standard of acceptability (Pet. App. 9a; Def. Exh. 2). Throughout this period of time, "his supervisors felt strongly both that he intended 'to do only enough to get by' (because of his feeling that he had been mistreated by management) and that he could easily come up to the proper standards if he desired" (Pet. App. 9a; Def. Exhs. 1, 2, D, E).

On June 26, 1963, petitioner was informed in writing by the Deputy Vice Chairman that he would not receive an in-grade salary increase because that officer could not certify that his work was of "an acceptable level of competence" (Def. Exh. 2). The decision was appealed by petitioner through his attorney to the Chairman of the Veterans Appeals Board (Def. Exh. 3). An oral hearing was scheduled but counsel for petitioner withdrew the request and submitted his appeal on the briefs (Def. Exh. 3). The Chairman of the Veterans Appeals Board, after examining the

performance-standard measurement and making inquiry of the reviewers, affirmed the Deputy Vice Chairman and determined that petitioner's work was not of an acceptable level of competence (Def. Exh. 3, p. 7). The Chairman noted that official notification to petitioner of the Deputy Vice Chairman's decision had been delayed because the Deputy Vice Chairman and petitioner's supervisors "desired to wait until June figures were available in the hope they would afford justification for a favorable determination" (Def. Exh. 3, p. 4).

This action was filed on September 2, 1964. On cross-motions for summary judgment, the government's motion was granted and the petition dismissed. "In the light of the Act's legislative history, the prior experience of the agencies of the Federal Government in evaluating their personnel, and the latitude given to the Federal Government as employer," the Court of Claims, in a unanimous opinion by Judge Davis, held the "acceptable level of competence" provision of the 1962 Federal Employees Salary Reform Act to be "a valid, not unduly general, standard to apply in deciding who should have in-grade raises" (Pet. App. 10a). The court also held that the Performance Rating Act, 5 U.S.C. 2002–2005, was not applicable to an agency's guidelines for determining an employee's "acceptable level of competence" under the 1962 Salary Reform Act (Pet. App. 2a–4a); that the Board of Veterans Appeals had substantially complied both with the Civil Service Commission's general directive on notice and the Board's own regu-

lations (Pet. App. 4a–6a); and that the officials of the Board had not abused their discretion in denying the pay increase (Pet. App. 7a–10a).

ARGUMENT

The contentions advanced by petitioner in support of his claimed right to an in-grade step increase in salary were carefully considered by the Court of Claims and found to be without merit. Further review is not warranted.

1. Petitioner contends that, in utilizing certain performance standards as a basis for determining that his work was not of an acceptable level of competence, the Board of Veterans Appeals failed to comply with the Performance Rating Act of 1950, which requires that "performance-rating plans" be approved by the Civil Service Commission. 5 U.S.C. 2003. However, the Performance Rating Act is inapplicable to determining acceptable levels of competence for purposes of awarding in-grade salary increases under the Federal Salary Reform Act of 1962—the very purpose of that Act, as the Court of Claims pointed out (Pet. App. 3a–4a), being to prescribe different criteria from those under the Performance Rating Act. See, *e.g.*, S. Rep. No. 2120, 87th Cong., 2d Sess., p. 24.

2. Petitioner contends that he did not receive adequate notice that his work was not of an acceptable level of competence prior to the date on which he became eligible for the increase, as required by the Veterans Administration's rules. The Court of Claims, finding substantial compliance with this requirement,

properly rejected petitioner's contention (Pet. App. 5a–6a). Not only was petitioner orally informed that his work was not up to the Board's standards of acceptable performance, but both in August 1962 and March 1963 he was informed in writing that his work was below average (Pet. App. 6a; Def. Exh. 1, p. 3, Def. Exh. E). He was specifically advised, almost three months before he became eligible for the in-grade increase, that his below-average performance "raised a strong presumption that a regular within-grade salary increase was not warranted" (Pet. App. 6a; Def. Exh. 1, p. 3).

3. Petitioner's final contention is that the application of the statutory criterion of "acceptable level of competence" to deny him a salary increase was arbitrary and capricious. Surely, however, the federal government, like other employers, is entitled to insist upon competent performance as a condition of salary increases and to exercise a broad discretion in determining competence. That discretion was not abused here. Petitioner's superiors strongly believed that petitioner intended "to do only enough to get by," and his overall efficiency index for May 1963—the last complete month before he became eligible for the increase—was far below the Board's standard of acceptability (Pet. App. 9a).

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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